

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Franya Marzec,	)	
	)	File No. WTB/ENF-98-0002
Complainant,	)	
	)	
v.	)	
	)	
Randy Power,	)	
	)	
Defendant.	)	

**ORDER**

**Adopted:** February 28, 2000

**Released:** February 29, 2000

**I. INTRODUCTION**

By the Chief, Enforcement Bureau:

1. In this order, we grant in part and deny in part a formal complaint filed by Franya Marzec ("Marzec") against Randy Power ("Power") pursuant to section 208 of the Communications Act of 1934, as amended ("the Act"). Marzec and Power are co-channel licensees of Specialized Mobile Radio ("SMR") frequency 854.0875 MHz. Marzec seeks a Commission order finding: (1) that Power has engaged in the unauthorized operation of mobile units in violation of the terms of his license for station WNXS420 in Lichtfield, Arizona (the "Power license"); (2) that Power operated his base station at an unauthorized location; and (3) that Power unlawfully interfered with Marzec's operations on the frequency shared by Marzec and Power. For the reasons stated below, we find that Power violated the terms of his Commission license by the unauthorized carriage of mobile traffic. We further find that Marzec has not met her burden of proof regarding her allegations that Power unlawfully interfered with her operations and operated his base station from an unauthorized location.

**II. BACKGROUND**

2. The Commission issued Power his base station license in March 1992. Under the Commission's rules in effect at the time, Power did not have to obtain Commission permission to carry mobile units because mobile end users were required to obtain their own licenses.<sup>1</sup> Not long after the Power license was issued, however, the Commission reversed its position by generally eliminating end-

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<sup>1</sup> 47 C.F.R. § 90.655 (1991).

user licensing and requiring base station licensees to obtain authority for mobile operations.<sup>2</sup> The Commission permitted base station licensees to continue carrying their licensed mobile end-user customers. None of Power's customers had obtained their mobile licenses under the old rules, even though Power had been serving these mobile units for some months.<sup>3</sup> Accordingly, when the new rules went into effect, Power's base station license did not include authority for mobile operations.

3. Although Power continued to serve his mobile customers after the rule change, he did not file a timely application to modify his license to allow mobile operations.<sup>4</sup> Because Power's license did not reflect any mobile traffic, under the Commission's rules, the frequency used by Power was subject to channel-sharing with another licensee.<sup>5</sup> Thus, in January 1993, the Commission granted a SMR license to Marzec on the same frequency as the Power license. In contrast to Power, Marzec requested and received authority to employ 70 mobile units, enough mobile loading under the Commission's rules to qualify for exclusive use of the channel for mobile traffic.<sup>6</sup>

4. Since the time Marzec began transmitting over the channel shared with Power in 1993, the parties have repeatedly clashed over control of the frequency. In this proceeding, Marzec has filed a formal complaint alleging that Power has violated his license by carrying mobile traffic on the frequency shared with Marzec. Marzec also claims that Power has interfered with her transmissions on the shared frequency, and that Power has transmitted from an unauthorized location. Marzec asks that the Commission award her money damages in an amount to be specified in a supplemental complaint, deny Power's renewal application,<sup>7</sup> and terminate his license. In his Amended Answer, Power denies that he interfered with Marzec's transmissions or that he was transmitting from an unauthorized location. Power admits to operating mobiles on the shared frequency, but characterizes this traffic as consisting only of the single mobile unit necessary for license renewal under Commission rules as well as occasional "emergency backup" traffic ordinarily carried on Power's other channels. Power concedes that his

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<sup>2</sup> See *Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems*, Report and Order, 7 FCC Rcd 5558, 5562-63, 59 Fed. Reg. 7716 (1992).

<sup>3</sup> Power alleges that he filed mobile license applications on behalf of his customers in late 1991. See Power Responses to Marzec's First Set of Interrogatories ¶ 24. Power has provided copies of two of these applications, as well as a November 20, 1991 cover letter from Power to the Commission's coordinating authority, NABER, requesting prompt processing. *Id.*, Attachment C. In his Amended Answer, Power states that NABER returned the applications, "informing Power that the Commission was no longer licensing end users." Amended Answer at ¶ 25. See also Power Responses to Marzec's First Set of Interrogatories ¶ 24 (same). Power has not, however, attached any correspondence from NABER indicating that the applications were ever received or returned. Nor has Power explained his failure to inquire about the status of his applications during the time NABER allegedly was considering them.

<sup>4</sup> Power only filed a modification application in March 1994, months after Marzec had obtained her license and exclusive use of the disputed frequency. See Marzec Final Brief, Exhibit C (Proposed Findings of Fact) at 4.

<sup>5</sup> See 47 C.F.R. § 90.633(b).

<sup>6</sup> See 47 C.F.R. § 90.633(a).

<sup>7</sup> In July 1998, after Marzec filed her formal complaint, the Wireless Telecommunications Bureau ("WTB") renewed Power's license, although it denied his application to modify the license to include mobile operations. The WTB recently affirmed this decision on reconsideration. See Letter from Terry L. Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Counsel of Record, dated December 3, 1999 ("*1999 Fishel Letter*"), *recon. pending*.

license did not authorize mobile operations, but alleges that his license would have included mobile operations but for misconduct by Marzec, mistakes by the Commission's coordinating authority, and excusable mistakes by Power while acting *pro se*.

### III. DISCUSSION

#### A. Power Violated His License By Carrying Mobile Users

5. It is well established that the complainant has the burden of proof in a formal complaint proceeding under section 208 of the Act.<sup>8</sup> Thus, Marzec must present affidavits or other relevant information<sup>9</sup> establishing, by a preponderance of the evidence, that Power violated the Act or the Commission's rules.<sup>10</sup> With respect to his affirmative defenses, Power bears an equal burden of demonstrating his claims by a preponderance of the evidence.<sup>11</sup>

6. Marzec alleges that Power has violated section 301 of the Act<sup>12</sup> and sections 90.113 and 90.135 of the Commission's rules<sup>13</sup> by conducting mobile operations in violation of the terms of his license. We find that Power has carried mobile traffic in violation of his license, and thereby violated the Act and the rules.

7. Marzec alleges, and Power does not dispute, that the Power license does not currently authorize Power to operate mobile units. Nor does Power dispute that he continues to conduct mobile operations on the contested frequency. Power admits that he generally operates at least one mobile unit six times per week<sup>14</sup> on the frequency and occasionally employs the channel as an "emergency back-up channel" for his school district customers' communications with their bus drivers.<sup>15</sup> Based on the above, we find that Marzec has demonstrated that Power violated the terms of his license by conducting mobile operations. We now turn to Power's affirmative defenses to Marzec's claim.

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<sup>8</sup> See 47 U.S.C. § 208; see also *Directel, Inc. v. American Tel. & Tel. Co.*, Memorandum Opinion and Order, 11 FCC Rcd 7554, 7560 (1996); *Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997).

<sup>9</sup> See 47 C.F.R. § 1.720(c).

<sup>10</sup> See *General Plumbing Corp. v. New York Telephone Co. et al.*, Memorandum Opinion and Order, 11 FCC 11799, 11809 n. 63 (1996).

<sup>11</sup> *Id.* See also *Procedures to be Followed When Complaints Are Filed Against Common Carriers*, Report and Order, 3 FCC Rcd 1806, 1809 (1988).

<sup>12</sup> Section 301 bars radio transmissions that are not "under and in accordance with a license" granted under the Act. 47 U.S.C. § 301.

<sup>13</sup> 47 C.F.R. § 90.113 states that "no radio transmitter shall be operated ... except under and in accordance with a proper authorization granted by the Commission." 47 C.F.R. § 90.135(a)(5) requires licensees to receive a license modification from the Commission before they change the number of mobile transmitters operating pursuant to their base station license.

<sup>14</sup> Power Responses to Marzec's First Set of Interrogatories ¶ 4. See also Amended Answer at ¶¶ 17, 19.

<sup>15</sup> Power Responses to Marzec's First Set of Interrogatories ¶ 6; Power Final Brief at 5; Power Supplemental Brief at 7.

8. Power argues that his conduct is excusable because he is allegedly required by sections 90.155(c) and 90.167(c) of the Commission's rules "to operate with at least one mobile unit in order to maintain his station's operation or risk cancellation of his license."<sup>16</sup> In essence, Power argues that he is permitted to violate one set of Commission requirements (his license) in order to comply with another (sections 90.155(c) and 90.167(b)). This reasoning ignores a basic principle of statutory construction requiring that statutes and regulations be construed "so that no provision is rendered inoperative or superfluous, void or insignificant."<sup>17</sup> Power also overlooks the intent of the rules upon which he relies, which presume that any mobile unit carried pursuant to their requirements will be authorized under the license.<sup>18</sup> Power has no authority to carry mobile traffic in the first place. Thus, Power's operation of the mobiles at issue in this case violates his license.<sup>19</sup>

9. Power also claims that he is authorized to use the frequency "as an emergency back-up channel" for his "public safety customers." He describes these customers as "local government users which employ the channel for emergencies arising in the operation of school buses and the transporting of school children." According to Power, this use is "extremely limited" and "solely for emergency purposes when the other channel installed in the radios is out of service and, yet, the safety of the lives of the children require communications to protect the transport of those persons."<sup>20</sup>

10. In support of this use, Power cites section 90.403(d) of the Commission's rules, which states that "[c]ommunications involving the imminent safety-of-life or property are to be afforded priority by all licensees."<sup>21</sup> But section 90.403(d) does not authorize Power's mobile operations on the shared frequency. That rule *limits* the authority of Part 90 licensees by prioritizing emergency communications, and does not affirmatively grant carriers authority to ignore their license restrictions.<sup>22</sup> The Commission

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<sup>16</sup> Amended Answer at ¶¶ 17, 19 (citing 47 C.F.R. §§ 90.155(c), 90.167(b)). Sections 90.155(c) and 90.167(b) of the Commission's rules require a base station licensee to have at least one associated mobile station in operation and provide service to at least one unaffiliated party for the Commission to consider the base station to be "placed in operation" and to have "commenced service," respectively.

<sup>17</sup> *C.F. Communications Corp. v. FCC*, 128 F.3d 735, 739 (D.C. Cir. 1997) (quoting *Mail Order Ass'n v. United States Postal Service*, 986 F.2d 509, 515 (D.C. Cir. 1993)).

<sup>18</sup> Generally, the Commission presumes that licensees comply with its rules. See, e.g., *Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934*, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 13494, 13557 n.212 (1997) (citing prior orders).

<sup>19</sup> We note that in its December 3, 1999 letter, the WTB found that Power's license could be renewed if Power lawfully engaged in the carriage of roaming traffic. See *1999 Fishel Letter* at 4. That letter decision is currently under reconsideration. See *supra* note 7. With respect to this proceeding, Power has never alleged that the mobile operations at issue here constitute such "roaming" traffic. See Power Response to Marzec's First Set of Interrogatories ¶¶ 4, 6, 24 (admitting to mobile operations without mention of roaming traffic). This decision, therefore, does not address whether Power's carriage of roaming traffic, if any, violates his license.

<sup>20</sup> Power Supplemental Brief at 7.

<sup>21</sup> 47 C.F.R. § 90.403(d).

<sup>22</sup> See, e.g., *Implementation of Sections 3(N) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Third Report and Order, 9 FCC Rcd 7988, 8086 (1994) (discussing limitations placed on Part 90 licensees, including the requirement that "communications relating to safety of life or property be given priority").

has designated certain frequencies as available for public safety<sup>23</sup> or occasional use,<sup>24</sup> and the disputed channel is not one of these. Moreover, even if we adopted Power's interpretation of section 90.403(d), Power has not provided us with any specific evidence of emergencies involving the "imminent safety of life or property" that might excuse his violation of the rules.<sup>25</sup> Indeed, Power's repeated use of the disputed frequency as an "emergency back-up channel" despite twice being informed by the Wireless Bureau that he could not conduct mobile operations on that frequency,<sup>26</sup> and without taking some other measure to ensure his customers' communications, indicates that the frequency performs less of an "emergency" role for Power than a "back-up" one.

11. Power's other affirmative defenses essentially rely on attacking the legitimacy of Marzec's license and have no bearing on the question of whether Power carried unauthorized mobile traffic in violation of his license. For example, Power asserts that Marzec lacks standing to file a formal complaint because Marzec allegedly was not properly licensed by the Commission.<sup>27</sup> But section 208 and the rules regarding formal complaints against common carriers generally authorize the filing of a complaint by "any person" claiming that a carrier has violated a provision of the Act or the Commission's rules.<sup>28</sup> The complaint at issue satisfies each of the requirements of section 208 and it is irrelevant whether or not Marzec was appropriately licensed. Moreover, even if Marzec did not suffer any redressable injury from Power's actions, section 208 clearly states that "[n]o complaint shall at any time be dismissed because of the absence of direct damage to the complainant."<sup>29</sup>

12. Power's other affirmative defenses are similarly meritless. He argues that Marzec's license application was premature and that "the Commission's grant of the license ... was an administrative error, subject to set aside, which would moot Marzec's complaint."<sup>30</sup> Power also contends that Marzec did not maintain her authority to operate her license by failing to timely construct her station

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<sup>23</sup> See 47 C.F.R. § 90.20 (describing frequencies available for public safety entities to obtain for their own use).

<sup>24</sup> 47 C.F.R. §§ 90.7, 90.35(c)(10), 90.35(c)(17) (describing "itinerant operation" channels). Licensees may not use other channels for such "itinerant" operations. 47 C.F.R. § 90.35(f).

<sup>25</sup> See *In the Matter of Spectrum Efficiency in the Private Land Mobile Radio Bands In Use Prior to 1968*, Notice of Inquiry, 6 FCC Rcd 4126, 4136 (1991) (describing a chemical spill as an example of an emergency involving the "imminent safety of life or property" under section 90.403(d)); *Amendment of Rules Concerning Medical Services Operations in the 450-460 MHz Band in the Special Emergency Radio Service*, Memorandum Opinion and Order, 80 FCC 2d 393, 400 (describing "emergency medical" communications as involving "imminent safety of life or property" under section 90.403(d)).

<sup>26</sup> In 1993 and 1994 the WTB found that Power was carrying mobile traffic in violation of his license. See Letter from Stephen Tsuya, Engineer in Charge, Arizona office, Field Operations Bureau, Federal Communications Commission, to Randy Power, dated Oct. 25, 1993 ("*Tsuya Letter*"); Letter from Terry L. Fishel, Chief, Land Mobile Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Randy Power, dated Feb. 7, 1994 ("*1994 Fishel Letter*").

<sup>27</sup> See Amended Answer at ¶ 37 ("whatever right Marzec asserts as a basis for her complaint was granted by the Commission due to ministerial error"). See also Power Final Brief at 16-17; Motion to Dismiss at 2.

<sup>28</sup> 47 U.S.C. § 208.

<sup>29</sup> *Id.* at § 208(a).

<sup>30</sup> Amended Answer at ¶¶ 37-38; Power Final Brief at 13.

in the required location.<sup>31</sup> As such, according to Power, “Marzec’s use of the station is unauthorized and, therefore, not subject to protection as claimed by Marzec’s Complaint.”<sup>32</sup> We reject each of these affirmative defenses. The status of *Marzec’s* license is irrelevant to whether or not *Power* violated the terms of his license. Regardless of Power’s belief that Marzec’s license was granted in error or should be revoked, Power does not have the right to disregard the Commission’s rules and the express terms of his license. Moreover, Power’s challenges to Marzec’s license are essentially counterclaims, and are explicitly barred from this proceeding under the rules governing formal complaints.<sup>33</sup> Power also asserts that Marzec’s claim is barred by the doctrine of unclean hands because Marzec has allegedly violated Commission rules in obtaining and operating under her license, and engaged in misconduct in this proceeding.<sup>34</sup> Again, these allegations are irrelevant to a determination of whether Power violated the conditions of his license.<sup>35</sup>

13. Power’s Amended Answer asserts several other affirmative defenses.<sup>36</sup> In his final brief, however, Power makes none of these arguments. Section 1.732(b) of the Commission’s rules expressly warns that “all briefs shall include all legal and factual claims and defenses previously set forth in the complaint, answer, and any other pleading submitted in the proceeding. Claims and defenses previously made but not reflected in the briefs will be deemed abandoned.”<sup>37</sup> Accordingly, we find that Power has waived these affirmative defenses.

#### **B. Marzec Has Not Established That Power Transmitted From Unauthorized Locations**

14. Marzec also alleges that Power transmitted from unauthorized locations, in violation of section 301 of the Act and Commission rules.<sup>38</sup> She claims that the Power license authorizes transmissions only from White Tank Mountain, Arizona, and that Power has transmitted from other, improper, locations on at least two occasions. Power denies these allegations. We find that Marzec has not met her burden of proof with respect to this claim.

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<sup>31</sup> Amended Answer at ¶ 45.

<sup>32</sup> Power Final Brief at 13.

<sup>33</sup> See 47 C.F.R. § 1.725 (defining “cross complaint” as including counterclaims; stating that “[c]ross-complaints seeking any relief within the jurisdiction of the Commission against any carrier that is a party (complainant or defendant) to that proceeding are expressly prohibited. Any claim that might otherwise meet the requirements of a cross-complaint may be filed as a separate complaint ....”).

<sup>34</sup> Power Final Brief at 17-18.

<sup>35</sup> See *Unbelievable, Inc. v. NLRB*, 118 F.3d 795, 800 (D.C. Cir. 1997) (rejecting unclean hands defense; finding that conduct of striking workers was irrelevant to allegations that employer engaged in misconduct during labor negotiations). Indeed, the Commission has expressed doubt that the unclean hands defense is available in section 208 proceedings in the first place. See *AT&T Corp. v. Bell Atlantic-Pennsylvania*, Memorandum Opinion and Order, 14 FCC Rcd 556, 598 & n.233 (1998) (citing *Perma-Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134, 138 (1968)).

<sup>36</sup> For example, Power alleges that his failure to obtain mobile authority was due to: (1) his own excusable mistakes during the application process while acting *pro se*; (2) ministerial mistakes by the Commission; and (3) misinformation provided to Power by NABER. See Amended Answer at ¶¶ 37-38, 42; see also *supra* note 3.

<sup>37</sup> 47 C.F.R. § 1.732(a).

<sup>38</sup> Complaint at ¶¶ 17-18 (citing 47 U.S.C. § 301 and 47 C.F.R. §§ 90.135, 90.693).

15. In her final brief and in the declaration attached to her complaint, Marzec claims that during the summer of 1997, Power improperly transmitted from his radio shop in Phoenix.<sup>39</sup> Marzec states that she “discovered that Power was transmitting a disruptive signal from his radio shop in north Phoenix -- not at White Tank Mountain where Power is authorized. The only conceivable purpose for that signal, which did not support communications activities, was to disrupt my system’s operation. Our attorney contacted Power’s counsel at that time and the signal ceased emanating from that location.”<sup>40</sup>

16. This allegation was not properly made in Marzec’s complaint, and therefore may not be considered in our decision. The complaint itself does not mention this claim. Rather, Marzec first mentions this alleged incident in a declaration attached to her complaint. Long-standing judicial precedent holds that a separate declaration may not correct a complaint’s deficiencies.<sup>41</sup> Accordingly, we will not consider this allegation. In any event, Marzec’s only evidence of this alleged incident is her own declaration, unsupported by any documentary or testimonial evidence from the person(s) responsible for tracing the alleged interference. As such, Marzec has not met her burden of proving this allegation by a preponderance of the evidence.

17. Marzec alleges in her complaint that Power improperly operated from an equipment shed on Shaw Butte Mountain, Arizona, more than 28 miles away from White Tank.<sup>42</sup> In support of this claim, Marzec attaches a declaration from a field technician who states that in January 1998, he traced a source of interference to Marzec’s station to a transmitter building on Shaw Butte. In that building, and alongside equipment known to be owned by Power, the technician found a small Motorola Desktrac-format base station transmitter set to the same frequency as that used by Marzec and Power. The technician states that the transmitter was the only source of interference to Marzec’s station.<sup>43</sup>

18. We find that Marzec has not met her burden of proof with respect to this claim. The only proof offered by Marzec that Power owned the Shaw Butte transmitter is that the transmitter was set on the same frequency as that shared by Marzec and Power, and that Power owned other equipment in that same location. But Power denies that he owned the transmitter in question.<sup>44</sup> Indeed, Power alleges, and Marzec does not deny, that the equipment in question was actually owned by Marzec’s former brother-in-law.<sup>45</sup> And although Power admits that he owned other equipment in the Shaw Butte shed, he points out that any transmission on the shared frequency from that location would have interfered with his own operations, as well as Marzec’s. Finally, Power states, and Marzec again does not deny, that he does not

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<sup>39</sup> See Complaint, Exhibit E (declaration of Franya Marzec (“Marzec Declaration”)); Marzec Final Brief at 5.

<sup>40</sup> Marzec Declaration at ¶ 4.

<sup>41</sup> See, e.g., *New York, N.H., & H.R. Co. v. New England Forwarding Co.*, 119 F. Supp. 380, 382-83 (D.R.I. 1953) (refusing to read fraud allegation into complaint solely from separate declaration); *Landau v. Wolverine Hotel Co.*, 33 F. Supp. 705 (N.D. Ill. 1940) (dismissing complaint for failure to state a claim; affidavit may not correct deficiencies in complaint). See also *GE Capital Communications Services v. AT&T*, Memorandum Opinion and Order, 13 FCC Rcd 13138, 13149 (1998) (declining to resolve issues raised for the first time in briefs).

<sup>42</sup> See Complaint at ¶ 13 and Exhibit D (declaration of Jim Holt, Canyon State Communications, Inc. (“Holt Declaration”)); Marzec Final Brief at 5.

<sup>43</sup> Holt Declaration at ¶ 4.

<sup>44</sup> Amended Answer at ¶ 13.

<sup>45</sup> See Supplement to Defendant Power’s Answers to Plaintiff’s First Set of Interrogatories at ¶ 2. See also Power Final Brief at 19 n.48.

use equipment compatible with the Shaw Butte transmitter. According to Marzec, the Shaw Butte transmitter was a Motorola transmitter. But Power contends that he uses “LTR format equipment that is incompatible with Motorola equipment.”<sup>46</sup> In view of the inconclusive nature of Marzec’s proof on this claim, we find that she has not established, by a preponderance of the evidence, that Power transmitted from an unauthorized location.

### C. Marzec Has Not Proven That Power Interfered With Her Signal

19. Marzec also alleges that Power’s mobile operations interfered with her transmissions in violation of section 333 of the Act, which states that “no person shall willfully or maliciously interfere with or cause interference to any radio communications by any station licensed or authorized by or under this Act ... .”<sup>47</sup> Although we find above that Power carried mobile operations in violation of his license, Marzec has not provided us with sufficient evidence to find that these operations or other alleged actions by Power interfered with her operations in violation of section 333. Marzec’s complaint alleges only one<sup>48</sup> incident of interference by Power, which Power denies.<sup>49</sup> But as discussed above, Marzec has not presented evidence sufficient to allow a reasonable person to conclude that Power was the source of the alleged interference. Accordingly, we find that Marzec has not met her burden of proof regarding this allegation.<sup>50</sup>

## IV. CONCLUSION

20. For the reasons discussed above, we conclude that Power violated section 301 of the Act and sections 90.113 and 90.135 of the Commission’s rules by operating mobile units without a license. We reject Marzec’s claims that Power violated sections 301 and 333 of the Act and relevant rules by transmitting from an unauthorized location and interfering with her transmissions, respectively.

## V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 201(b), 205(a), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 205(a), and 208, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that Marzec’s complaint IS GRANTED IN PART, and DENIED IN PART, as described in this Order.

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<sup>46</sup> Amended Answer at ¶ 13.

<sup>47</sup> Complaint at ¶¶ 17 (citing 47 U.S.C. § 333). *See also* Complaint at ¶ 20; Marzec Final Brief at 4 n.6.

<sup>48</sup> As noted above, Marzec makes a second allegation of Power’s interference in the declaration attached to her complaint, but fails to make this allegation in the complaint itself. Accordingly, we will not consider it here. *See supra* note 41 and accompanying text.

<sup>49</sup> *See* Amended Answer at ¶ 40 (“Marzec is not experiencing any interference with her use of her station. Power, at all times, monitors the channel before transmitting. At worst, Marzec experiences a delay in transmitting.”).

<sup>50</sup> It is unclear whether Marzec also seeks damages for the actions by Power that generated the *Tsyua Letter* and *1994 Fishel Letter*. *See supra* note 26; Complaint at ¶¶ 6, 9. In any event, both incidents fall outside the two-year statute of limitations governing section 208 complaints, and therefore any claims based on these incidents must be denied. *See* 47 U.S.C. 415(b).



22. It is FURTHER ORDERED, that the Motion to Dismiss, filed by Power on July 12, 1999, the Petition for Reconsideration and Objections to Interrogatories, filed by Marzec on April 21, 1999, the Motion to Strike or Request for Leave to File a Reply, filed by Power on April 21, 1999, and the Motion to Combine Proceedings, filed by Power on April 21, 1999, ARE DISMISSED as moot.

23. It is FURTHER ORDERED, that Power shall IMMEDIATELY upon release of this Order, stop all mobile operations, as described in this Order, under the Power license.

24. It is FURTHER ORDERED, pursuant to section 1.722(b)(2) of the Commission's rules, 47 C.F.R. § 1.722(b)(2), that Marzec may file her supplemental complaint for damages within 60 days of the date of public notice of this order.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau